

## **REGULATORY APPRAISAL**

### **EDUCATION, WALES**

#### **THE EDUCATION ACT 2002 (COMMENCEMENT No. 7) (WALES) ORDER 2005**

##### **Purpose and intended effect of the measure**

1. The purpose of this Order is to commence provisions in the Education Act 2002, which will allow the National Assembly for Wales to make Regulations to replace provisions of the School Standards and Framework Act 1998 and Regulations currently in force under it, covering the Government of Maintained Schools and Instruments of Government, Annual Parents Meetings, Payment of Allowances to Governors and the establishment of temporary governing bodies for new schools.
2. The Order also commences consequential amendments which apply responsibilities for Special Educational Needs (SEN) provision, exclusion of pupils, school funding and inspections on governing bodies of nursery schools once they have been constituted under the proposed Government of Maintained Schools (Wales) Regulations 2005. The Order also commences amendments of the 1998 Act relating to attendance targets.
3. The provisions in the Education Act 2002 brought into force by this Order are;
  - Section 19 and Schedule 1 - which replace sections 36 and Schedules 9,10 and 11 of the 1998 Act, relating to the government of maintained schools including the constitution and membership of governing bodies, proceedings, functions and responsibilities, committee structure and membership, incorporation of and name and seal of a governing body, and provides for the Assembly to make regulations in relation to these matters;
  - Section 20 – which replaces section 37 of, and Schedule 12 to, the 1998 Act and requires every maintained school to have an Instrument of Government, which determines the constitution of the governing body and other matters relating to the school such as ethos statement and provides for the Assembly to make Regulations in relation to these matters;
  - Section 23 – replaces paragraph 8 of Schedule 11 to the 1998 Act and allows Regulations to be made relating to the appointment of a clerk to the governing body and certain committees and definition of the clerk's functions;
  - Section 33 – replaces section 43 of the 1998 Act requiring governing bodies to hold an annual meeting with parents;
  - Section 34 replaces provisions in section 44 of the 1998 Act and sets out arrangements for the government of new schools including the need for the LEA to constitute a temporary governing body that will have the powers to carry out the functions as a permanent governing body;
  - Section 39 – contains definitions and clarifies that references to maintained schools include maintained nursery schools;

- Section 52 (11) – the effect of which is that the provisions relating to exclusion of pupils from schools will apply to nursery schools; and
  - Section 53 – which amends section 63 of the 1998 Act and allows the Assembly to include authorised absences in the targets that governing bodies can be required to set by Regulations.
4. This Order commences provisions in the Education Act 2002 which repeal parts of the School Standards Framework Act 1998 and enables the Assembly to make fresh Regulations to cover the matters which were previously in the 1998 Act. These Regulations are being made in parallel with the Commencement Order. The new Regulations themselves will not amend or repeal the primary legislation. In other parts the Order commences provisions which amend or repeal existing primary legislation.

### **Risk Assessment**

5. If the Order is not made then none of the provisions and Regulations listed above will be commenced, which could have a detrimental effect on school governing bodies as they will not be able to benefit from the greater flexibility offered by the changes. It will mean that nursery schools will not be able to form a governing body and will not be able to receive a delegated budget.

### **Options**

#### Option 1: Do nothing

6. If this Commencement Order is not made then none of the proposed provisions and Regulations listed above can come into force, which could have a detrimental effect on the way governing bodies operate as they will not be able to benefit from the greater flexibility offered by the changes.

#### Option 2: Make the Legislation

7. The Implementation of this Order will commence the relevant sections of primary legislation and repeal others and enable the association Regulations to be made.

### **Costs**

8. There are no additional financial implication for the Assembly, Local Education Authorities, schools or governing bodies arising from this Order.

### **Consultation**

#### With Stakeholders

9. No consultation has been carried out in respect of this Commencement Order as it was not considered necessary given that its purpose is simply to commence provisions in the Education Act 2002, which enable Regulations (the proposed Government of Maintained Schools (Wales) 2005; the proposed Annual Parents' Meeting (Exemptions) (Wales) Regulations 2005 and the Governors Allowances (Wales) Regulations 2005) to be made. These Regulations have been subject to extensive consultation.

### With Subject Committee

10. This Order was notified to the Education & Lifelong Learning Committee via the list of forthcoming legislation on 9 March 2005 and has remained on the list ever since (ELL2-03-05 (p.5) item No: ELL 34-05). The Order was not identified for detailed scrutiny.

### **Review**

11. There is no plan to review this Order as it simply commences provisions in the Education Act 2002. However, the associated Regulations will be monitored following implementation, and if over time, it is evident that there is a need for further change, this would be considered and subject to further consultation.

### **Summary**

12. This Order commences provisions in the Education Act 2002, which will allow the National Assembly for Wales to make Regulations to replace provisions of the 1998 Act, and those Regulations currently in force under it that impact on and effect governing bodies. The Order will also apply various provisions so as to give responsibilities to governing bodies of nursery schools when they are constituted to bring them into line with governing bodies of other maintained schools.